

### Remarks

Claims 1-2, 4-8, 10, 12-20, 22-26, 28-30, 33-37, and 39-41, 43-66 are presented for the Examiner's review and consideration. In this response, claims 13 and 19 are amended, claims 11, 31-32, and 42 are cancelled, and claims 43-66 are added. Applicant believes the accompanying amendments and remarks, herein, serve to clarify the present invention, and are independent of patentability. No new matter has been added.

#### 35 U.S.C. §102(b)

Claims 13-18, and 39, were rejected under 35 U.S.C. §102(b) as being anticipated by Glock (U.S. 5,462,549) ("Glock"). For reasons set forth below, Applicant respectfully submits that this rejection should be withdrawn.

#### *Glock*

Glock discloses "a femoral sizing apparatus generally indicated as 10. The apparatus includes a plurality of different sized plates or templates 12 (one shown) that are generally flat and have a handle 14 attached thereto." (C3L34-37). "Each plate 12 is U-shaped and includes a central open section 30. Central open section 30 is provided for receiving therethrough an intramedullary rod used by some surgeons during the operation. Typically, the intramedullary rod is located longitudinally within the center of the femur. Central open section 30 is open toward posterior edge 18 so that the plates 12 can be easily slipped over an intramedullary rod when placing them against a distal femur." (C3L50-57).

As further stated in Glock, "Slots 40 can be used after plate 12 is securely anchored to the femur distal end 31 for receiving a cutting instrument therethrough and guiding the cutting instrument for making the anterior and posterior cuts 42. More preferably, however, anterior and posterior slots 42 are only used for viewing the location of the needed anterior and posterior cuts for the corresponding specific femoral component 36. Here, a corresponding cutting block 44 can be attached to the femoral distal end for providing the necessary guiding surfaces in making not only the anterior and posterior cuts 42 but also the angled chamfer cuts 46." (C4L9-19).

"Accordingly, during the operation, after the femoral and tibial distal ends are exposed, the surgeon first makes the distal femoral cut making the end of the femur generally flat. At that

point, the femoral sizing apparatus 10 is used for determining the appropriate femoral component size.” (C4L30-35).

Accordingly, Glock discloses a femoral *sizing* apparatus having a principal purpose as an aide to determining a correct implant size. Glock discloses that it is preferred not to use the sizing guide as a cutting guide, but rather to use a cutting block, as shown in Fig. 4 of the reference. Indeed, if the objective in Glock is to use the apparatus to merely determine an implant size, a precise alignment of the device may not be needed, and thus conventional intramedullary alignment would not be required for that limited task. On the contrary, however, if the sizing apparatus were to be used as a cutting block, it would need to be precisely aligned. However, *no means are disclosed* for aligning the sizing apparatus absent an intramedullary rod. It may be assumed, therefore, that the known prior art technique of using an intramedullary rod would be required in order to perform the necessary alignment for using the sizing guide as a cutting block.

Moreover, Glock clearly states that the distal femoral cut is made prior to employing the sizing apparatus. The only method disclosed in Glock for forming the distal cut is an intramedullary rod. Accordingly, the sizing apparatus cannot be positioned on the femur without first forming the distal cut, the distal cut cannot be formed with an intramedullary rod, and thus, the sizing guide cannot be positioned without alignment with an intramedullary rod.

Claim 13 recited, *inter alia*, a guide, for forming a cut surface, attached free of an extramedullary or intramedullary alignment rod, which Glock clearly does not suggest or teach. However, to clarify the invention and further prosecution of the application, amended claim 13 recites, *inter alia*, that the cutting guide has “a body dimensioned for attachment to a surface of an unresected end portion of the bone”, and is “aligned for cutting the bone without use of an extramedullary or intramedullary alignment rod”. Both of these claimed elements, at least, are missing in Glock, and thus Glock cannot anticipate claim 13.

Accordingly, Applicant respectfully submits that claim 13 is patentable over Glock. As claims 14-18, 34, and 39, depend from claim 13, these dependent claims necessarily include all the elements of their base claim. Accordingly, Applicant respectfully submits that the dependent claims are allowable over the cited references for at least the same reasons.

In light of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the §102 rejection.

Conclusion

In the light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

Fees of \$1,040 for 20 additional claims, and \$440 for two additional independent claims, are believed to be due. However, please charge any required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 500601 (Docket No. 780-A03-012C).

Respectfully submitted,

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